

From: ["Hamilton, Karen" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=464B97BC84BE4DD582A98FA4C0ADA6CE-HAMILTON, KAREN>](#)

To: [Wade](#)  
[Alexis;Perkins](#)  
[Erin;McCarthy](#)  
["Julia; Downing"](#)  
[Donna](#)

CC:

Date: 1/26/2015 5:27:58 PM

Subject: FW: EPA Review/McNulty Gulch AJD for Climax Mine, #SPK-2013-45

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Fyi. This is the Corps' wetlands specialist responding to the Grand Junction Branch Chief's question following Climax's email to me and to her

-----Original Message-----

From: Finan, Michael C SPK [mailto:Michael.C.Finan@usace.army.mil]  
Sent: Monday, January 26, 2015 4:00 PM  
To: Nall, Susan SPK  
Cc: Nepstad, Michael G SPK; Hamilton, Karen; Clay, Lisa H SPK  
Subject: RE: This portion has been redacted and referred to the Corp. of Engineers

[Redacted]

[Redacted]

This portion has been redacted and referred to the Corp. of Engineers

-----Original Message-----

From: Hamilton, Karen [mailto:Hamilton.Karen@epa.gov]

Sent: Monday, January 26, 2015 7:50 AM

To: Nall, Susan SPK; Finan, Michael C SPK

Cc: Nepstad, Michael G SPK

Subject: [EXTERNAL] (b) (5) - Deliberative

-----Original Message-----

From: Nall, Susan SPK [mailto:Susan.Nall@usace.army.mil]

Sent: Monday, January 26, 2015 8:48 AM

To: Finan, Michael C SPK

Cc: Hamilton, Karen; Nepstad, Michael G SPK

Subject: This portion has been redacted and referred to the Corp. of Engineers

This portion has been redacted and referred to the Corp. of Engineers

-----Original Message-----

From: Lazuk, Raymond [mailto:Raymond\_Lazuk@FMI.com]

Sent: Saturday, January 24, 2015 3:34 PM

To: Hamilton, Karen (Hamilton.Karen@epa.gov)

Cc: Nall, Susan SPK; Deely, Sheila H.

Subject: [EXTERNAL] EPA Review/McNulty Gulch

Karen,

Thank you for the phone conversation yesterday regarding EPA's progress on review and consideration of the extensive information Climax submitted to EPA during our October meeting and our follow-up submission concerning Clean Water Act jurisdiction in the McNulty Gulch area at Climax Mine. As you know we requested that EPA discuss its conclusions on CWA jurisdictionality at McNulty with Climax following review of this information. We are deeply concerned with the lack of responsiveness and EPA's and the Corps of Engineers' apparent unwillingness to confer with Climax. Also troubling is the lack of transparency on the results of the meeting in December between EPA and CDPHE-WQCD regarding Climax's CDPS coverage (and prior NPDES coverage). Our expectation back in October was that Climax would be a party to that discussion. We deem Section 402 coverage at McNulty as being well established by the NPDES and subsequent CPDS permits, and as a regulatory matter between Climax, CDPHE and EPA. Yet, when we contacted CDPHE following your meeting with them to discuss this, Climax was informed by CDPHE to contact the Corps of Engineers for information.

EPA's explanation of its view as to the relationship between existing Section 402 jurisdiction and permits and future Section 404 jurisdiction and permits at McNulty is clearly important. Therefore we trust that you can appreciate our concern over your continual deference to the Corps on this matter. Absent any immediate change in EPA's position we will shortly request a meeting with Shaun McGrath to ask for greater transparency and dialogue with EPA, as well as with the Corps of Engineers, before a JD is issued for McNulty Gulch.

- Ray

Raymond Lazuk  
Environmental Manager  
Climax Molybdenum Company  
Climax Mine  
HWY 91 - Fremont Pass  
Climax, CO 80429

Office: 719-486-7584  
Cell: 719-201-1282  
raymond\_lazuk@fmi.com